

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0317
Sales/Use Tax
For the Years 1998, 1999, 2000

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ISSUES

I. Tax Administration-Best information available

Authority: IC 6-8.1-5-1

Taxpayer protests the Department's assessment of sales tax with respect to Indiana sales at auctions, based on auditor reliance on bank deposit records and lack of properly completed exemption certificates.

STATEMENT OF FACTS

Taxpayer is a self-employed auctioneer doing business in both Indiana and Kentucky. During those years, taxpayer deposited sums of money into his personal bank account in excess of reported sales for taxable years 1998, 1999, and 2000. During the course of audit, taxpayer was asked about the excess deposits. Taxpayer provided sales tickets for several sales and documents that taxpayer maintained showed that several sales took place in Kentucky. Taxpayer also attempted to show that various sales were made for exempt purposes, primarily for goods that would be resold. After discussions with the taxpayer's representative regarding the proposed assessment and alternative methodology for determining the liability, the auditor accepted some of the information provided as showing that sales were not subject to Indiana sales tax. However, audit did not accept certain information, and accordingly assessed sales tax against taxpayer. Taxpayer protested audit's assessment, and accordingly a Departmental hearing was held via telephone.

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DISCUSSION

Under Ind. Code § 6-8.1-5-1(a), "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." Further, under Ind. Code § 6-8.1-5-1(b), "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the

proposed assessment is wrong rests with the person against whom the proposed assessment is made.” This is the nature of the Department’s assessment.

Taxpayer has no issue with the Department’s use of taxpayer’s bank deposits as a starting place for determining taxable sales. Taxpayer, however, takes issue with a portion of the deposits being subjected to tax. In addition, taxpayer takes issue with Department’s review of exemption certificates for several purchasers, and refusal to accept taxpayer’s sampling of sales. Further, taxpayer has noted that, since taking on additional compliance measures, taxpayer’s sales taxes for the past years have been an amount much lower than the Department’s assessments

First, taxpayer has stated that the nature of taxpayer’s business caused taxpayer to engage in significant withdrawals and deposits of the same cash. An example of these transactions is this: taxpayer receives \$10,000 in an auction, and makes a deposit of the cash. Taxpayer withdraws \$9,000 to buy articles from an estate to sell at auction. Taxpayer buys \$1,000 of items, and deposits the \$8,000 back into the bank. While this is plausible, and would permit the Department to reconsider taxpayer’s liability, taxpayer has not provided documentation, such as bank records and supporting documentation, that would show that a deposit of taxable proceeds was made, and then a cash withdrawal followed by subsequent redeposit was made.

Second, with respect to exemption certificates, taxpayer has not provided further evidence to permit review of the certificates. Also, taxpayer has not made a presentation of information consistent with an alternative method that would permit the Department to make an alternative determination. Thus the auditor’s determination, with a presumption of correctness, has not been rebutted.

Third, with respect to the years after the audit period, even if the last three years are a better reflection of taxpayer’s true tax liability, the nature of the liability is for the three years at issue, and is presumed to be correct per Ind. Code § 6-8.1-5-1(b). Taxpayer’s burden is to show, by virtue of appropriate records and/or legal arguments, that the auditor’s determination is incorrect for the years in question. For the years in question, taxpayer has not met that burden.

FINDING

Taxpayer’s protest is denied.